

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3659 of 1997

For Approval and Signature:

Hon'ble Mr.Justice D.G.Karia.

NARHARI HIRALAL AMIN

Versus

KATHIAWAR NIRASHRI BALASHRAM

Appearance:

MR SI NANAVATI for Petitioners

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 07/05/97

ORAL JUDGMENT:

Rule. Mr.Mihir Joshi, learned Advocate, waives service of rule for the respondent.

The learned Assistant Judge, Rajkot, having satisfied that it was for the welfare of the minor child named Akhil alias Varun passed the order as to adoption of the child and appointment of the petitioners as his guardians. The learned Judge thus granted the application as per his judgment and order dated 1.5.1997 rendered in Civil Misc.Application No.45/97. The learned Judge also concluded that the petitioners are in good health and having good income so as to treat and maintain the adopted child in proper and good condition. The learned Judge also recorded his satisfaction that the adopted child will get love and affection as of his parents from the petitioners. Accordingly, he allowed the application of the petitioners granting permission under section 9(4) of the Hindu Adoption and Maintenance Act,1956. The learned Judge, however, imposed several conditions while allowing the application and the said conditions are impugned in the present petition.

Mr.Mihir Joshi, learned Advocate for the respondent-Institution has no objection if the suitable order striking off those conditions is passed.

The first condition imposed by the learned Judge is that the petitioners should bring the child once in three months to the respondent-Institution and the responsible officers of the said institution, after making due inquiry, shall prepare a detailed report about the progress of the bringing up of the boy and the respondent-institution will submit the report to the Court. The said process may thereafter be repeated at the interval of every six months for five years. The learned Judge, having been satisfied as to the status and stature of the petitioners, the petitioner No.1, being a former Minister, and that the welfare and interest of the child would be maintained, should not have imposed such an unreasonable condition of bringing the child before the Institution at intervals. The Institution agreed to give the child in adoption, after satisfying the need of the petitioners and welfare of the child. If the respondent-Institution or any of its officers has any doubt or suspicion about the maintenance and bringing up of the child, it would be open for it to make necessary report to the Court concerned and in that eventuality, necessary orders may be passed for bringing the child; otherwise such a condition to bring the child once in three months and thereafter at the interval of every six months for five years thereafter would be unreasonable and unnecessary. In the facts and circumstances of the case, such production of the child may cause sense of separation in tender mind of the child in future time. The learned Judge assigned no reason or gave any justification for imposing such condition. Mr.Mihir Joshi rightly points out that no such condition was sought by the respondent-Institution. Having regard to the overall facts and circumstances of the case, the said condition is ordered to be struck off.

The second condition imposed by the learned Judge is that the petitioners shall not remove the child out of India without written permission of the Court. It is manifest from the judgment that the petitioners are responsible persons having good status and income in life and that they are not dealing in selling the orphaned children in foreign countries. Mr.S.I. Nanavati, learned Advocate for the petitioners, submits that the

petitioners are required to frequently visit foreign countries due to business-requirements and if they have to approach the Court for such permission often, it would cause immense hardship and inconvenience to the petitioners. Apart that, when the Court has recorded its satisfaction about the status of the petitioners and that the child would be getting the love and affection from the petitioners, such a written permission of the Court in event of taking the child out of India will not be necessary. However, if the respondent-Institution feels that the child is to be kept out of India permanently or for a longer period, it may move the Court, after consultation with the petitioners, in this regard.

The adopted child Varun is to be the child of his adoptive father and mother, the petitioners herein, for all purposes and all the ties of the child with the respondent-Institution or with the family of his birth shall be deemed to be severed and replaced by those created by the adoption in the family of the petitioners. This is the effect of adoption as envisaged by sec.12 of the Hindu Adoption and Maintenance Act, 1956. In that view of the legal position and in facts of the case, the conditions imposed are unwarranted and irrelevant. In my opinion, it is essential and desirable that the child becomes oblivious of his previous connection and contacts and gets love and affection as of his real parents. Therefore, the conditions are unnecessary and unreasonable. Consequently, the conditions are quashed.

It is also the prayer of the petitioners that the name of the child be allowed to be kept as "Varun" instead of "Akhil alias Varun", as is referred to in the impugned judgment, as the petitioners being believers in astrology and having regard to the birth-date of the child,etc. are of the view that the child be named on his 'Rashi'. Mr.Mihir Joshi,for the respondent, has no objection, and there cannot be any objection to allow the petitioners to keep such name. The prayer of the petitioners in this regard is, therefore, granted, allowing them to name the child as "Varun", instead of "Akhil alias Varun".

It will be open for the petitioners to make necessary application to the Rajkot Municipal Corporation or other authorities for inserting their names as parents of the adopted child and for necessary mutations in the name of the child as aforesaid. The Rajkot Municipal

Corporation is hereby directed to mutate necessary entries in the relevant record of birth register showing the names of the petitioners as parents of the child Varun and issue the birth-certificate accordingly.

The petition is allowed to the aforesaid extent.
Rule made absolute accordingly. No costs.

Direct Service Permitted.

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